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February 3, 2004

US Department of Transportation
Associate Administrator for Hazardous Materials Safety
Research and Special Programs Administration
400 7th Street
Washington, DC 20590-0001
ATTN: DHM-31

RSRA - 2004-17548-1

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DOT/RSRA/GHMS
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This is a **request for exemption** prepared in accordance with **49 CFR 107.105**.

The applicant is:

Richard Jay Arthur, *a resident of the United States*
Director of Regulatory Compliance
Blue Rhino Corporation
104 Cambridge Plaza Drive
Winston-Salem, North Carolina 27104
336-659-6754

Blue Rhino Corporation is seeking relief from **49 CFR 173.29** as expressed in the regulation and in the interpretation of the regulation. (See Attachment 1)

This discussion pertains to only one hazardous material, UN 1075 LP Gas. No other HAZMAT is ever carried on our loads.

This discussion applies to highway transportation via private carrier truck.

This discussion applies solely to DOT 4BA240 steel cylinders commonly referred to as "twenty pound cylinders".

This letter seeks a permanent exemption.

Our business, Blue Rhino Corporation, is a propane cylinder exchange company that accepts expended cylinders in exchange for inspected and refurbished full cylinders. This service provides the consumer with a quality product at greater convenience than is available from re-filling stations. In our ten years of business, working with major retailers as well as through small convenience stores, we have exchanged 50,000,000 cylinders.

The aggregate impact of our business has been to improve the quality of the propane cylinders in use across the country. Blue Rhino inspects cylinders for safety every time they are filled. The company has upgraded and extended the life of cylinders that were in acceptable condition and retired and properly scrapped hundreds of thousands of sub-standard cylinders that would have otherwise been placed into the waste stream or thrown into dumpsters. Blue Rhino has replaced millions of valves to upgrade the safety of these cylinders into the hands of the consumers. We have provided consumers with a superior

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product label (Attachment 2) intended to answer many questions or refer the consumer to resources where questions can be answered by well-trained technicians.

Blue Rhino accepts for exchange many cylinders that have been re-filled by individuals or businesses that have not applied HAZMAT labels to the cylinders. Those who re-filled these cylinders are generally not available over the phone after hours. They typically do not acknowledge responsibility for their work by way of a label. In many cases the customer does not even get a receipt.

The cylinders Blue Rhino receives in exchange are periodically picked out of the locked display at the retail location, placed on a placarded delivery trailer with segmented compartments, then returned to the refurbishment facility where they will be off loaded. Our automated ticketing system allows for the shipping papers to be adjusted after each stop to reflect the current balance of full and expended cylinders (Attachment 3). Cylinders remain out of public view and locked from public access during this trip. They are also typically accompanied by an average of two to three times as many properly labeled Blue Rhino cylinders. All acceptable cylinders are inspected, refurbished, filled and labeled with our labels.

Although 173.29 (c) allows for a trailer full of (approximately 2,000) unpurged cylinders to be shipped unplacarded in a single compartment trailer from place to place, it does not allow a load containing some full and some expended cylinders to be shipped on a placarded vehicle when some of the individual expended cylinders are not labeled.

We point out that all of the individual cylinders in this load are all designed to hold the identical product, LP Gas. Further, the shipping papers, placards as well as the preponderance of individual cylinders on each vehicle will be so labeled. The shipping papers also provide a precise count of the number of cylinders full and expended on each load at any given time.

The requirement to label these previously unlabeled cylinders solely for the purpose of transporting them, hidden from view, back to the refurbishment plant would place an excessive financial burden on Blue Rhino. There is no advantage to be gained from the exercise of labeling these cylinders that should, in the event of an accident where the beverage truck would spill its contents, be easily recognizable and are individually accountable.

Blue Rhino provides substantial upgrades to millions of DOT cylinders. Moreover, the company provides labels that have allowed a dialog with consumers that has improved our product and reduced the dangers and anxieties to consumers when the product is in their hands. Blue Rhino's labels promote safe use and correct disposal. Part of the dynamics of this process is the willingness of the company to accept these unlabeled cylinders and return them to the market place as a better HAZMAT container. The overall effect is that a higher level of safety is achieved.

This is our illustration to show the relative risks and benefits:

Under strict enforcement of 173.29 we would no longer be able, because of expense, to accept in exchange any cylinder that was not already labeled. This means that individual cylinder which currently fails to carry a label would not be remedied and would continue to be in circulation without a label.

Under our proposed exemption, such a cylinder could be accepted for exchange, inspected, refurbished, and properly labeled. This improves the overall safety situation.

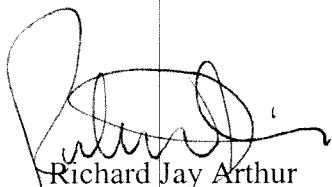
The trade-off is that cylinders in transit are exposed to risk and if involved in an accident.. Offsetting this exposure, however, are all of the following:

1. Proper vehicle placarding. All vehicles display 1075 when carrying cylinders, full or expended.
2. Shipping papers reflect a correct current accounting for all cylinders both full or expended. This allows for an inventory on site to determine if all cylinders are accounted for.
3. The majority of the cylinders in such an accident would be Blue Rhino's returned cylinders and WOULD be properly labeled.
4. The configuration of the cylinder is unique and easily attributable to LP Gas.
5. The delivery vehicle is segmented with metal partitions, well secured for transport and the entire contents of the vehicle are not likely to spill at once.

These exposures to risk appear to be less of concession to safety than the practice allowed by 173.29 whereby unplacarded vehicles with up to 2,000 unlabeled cylinders traveling the same highways could spill and the entire contents of the unsegmented vehicle would be on the road without benefit of placard, shipping papers or labels.

Blue Rhino's business depends to great degree on our ability to economically recover and properly label cylinders that have been left unlabeled by others. We request an exemption to allow us to continue doing this work.

Please do not hesitate to call me should you have any questions. I am at 336-659-6754.



Richard Jay Arthur
Director of Regulatory Compliance
Blue Rhino Corporation



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

NOV 24 2003

400 Seventh St., S.W.
Washington, D.C. 20590

Mr. Richard J. Arthur
Director of Regulatory Compliance
Blue Rhino Corporation
104 Cambridge Plaza Drive
Winston-Salem, NC 27104

Ref No.: 03-0285

Dear Mr. Arthur:

This is in response to your letters dated November 19, 2003, regarding transportation of cylinders containing a residue of propane under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180).

Section 173.29(b)(2)(ii) requires that a cylinder be sufficiently cleaned of residue and purged of vapor to remove any potential hazard to be considered as not regulated under the HMR. The methods and limits used for determining what qualifies as a "cleaned and purged" under the HMR are intentionally not defined because they are greatly depending on the properties of the particular hazardous material and type of packaging. In the case of propane, other variables such as purge medium, temperature conditions and cylinder volume are also factors. We would consider a propane cylinder to be sufficiently cleaned and purged when the vapors in the cylinder are no longer capable of sustaining combustion.

If cylinders have been cleaned and purged of residue as provided by § 173.29(b)(2)(ii), they are not subject to any requirements of the HMR. When cylinders are transported as non-regulated, the DOT markings and labels on the cylinders must be removed or covered, or the cylinders must be transported in a manner that the packaging is reusable as prescribed in § 173.29(b)(1).

If the cylinders are not purged, they remain subject to the requirements in the HMR. However, as provided by § 173.29(c), such cylinders are not subject to requirements for placarding and shipping papers when collected and transported by a contract or private carrier for reconditioning or reuse.

I hope this information is helpful. Please contact me if you require additional assistance

Sincerely,

Susan Gorsky
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards



030285

173.29



Blue Rhino Corporation
104 Cambridge Plaza Drive
Winston-Salem, NC 27104

800.258.7466
P 336.659.6900

US DOT
ATTN: Susan Gorsky
Senior Transportation Regulations Specialist
400 Seventh St. SW
Washington- DC 20950

REFERENCE 03-0285

Dear Ms. Gorsky:

Thank you for the response and your willingness to review the one additional point that remains unclear. We believe the problem to one of interpretation rather than flawed policy.

Blue Rhino's distributor in Massachusetts has been cited by the State Police for transporting expended cylinders without labels on one of our delivery trucks. We are seeking a clear interpretation from DOT as to the course of action that best supports public safety.

We understand that 173.29 (c) allows the transport of entire trailers of expended, unpurged cylinders, including some that are not labeled, without placard or shipping papers for the purpose of reconditioning or reuse.

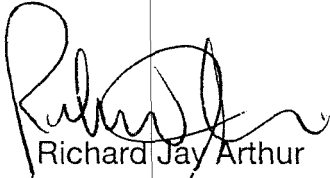
As a point of comparison, Blue Rhino always placards and documents any vehicle carrying any quantity of cylinders, full or expended. On our delivery vehicles, loads usually change from a truckload of all full cylinders to a truckload that has both full and expended cylinders. As the driver makes deliveries, he also picks up expended cylinders.

Cylinders that were prepared by Blue Rhino are individually labeled. However, we also exchange cylinders that are prepared by re-fillers who do not label their products at all.

During the transport of the expended cylinders on our delivery vehicles, the cylinders are secure, not visible, and are returned the same day to the refurbishing facility where they are inspected, re-qualified filled and labeled to the highest standards in the industry. In the remote chance of an accident or incident along the road, our shipping papers, placards and many individually labeled cylinders would clearly establish the contents. Certainly, Blue Rhino provides a situation that would be clearer than with a truck (such as allowed by 173.29(c) with neither shipping papers nor placards spilling its contents.

The State Police citation could be satisfied by the wasteful, proposed practice of buying, applying and then removing labels on individual expended cylinders simply to transport them to the refurbishing location where they would be removed upon arrival. The costs would be ruinous and the net result would be that Blue Rhino could not be involved in upgrading the standards of inspection, filling and labeling that we are performing now.

The true danger here is that cylinders are being re-filled and provided to the public without labels. Such cylinders neither provide emergency information nor essential consumer assistance. Blue Rhino prides itself as part of the solution, not the problem. We ask your support in an interpretation that will support a challenge to that citation.

A handwritten signature in black ink, appearing to read 'Richard Jay Arthur', with a stylized, flowing script.

Richard Jay Arthur
Director of Regulatory Compliance
Blue Rhino Corporation